



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 19, 1997

Ms. Mary Keller
Senior Associate Commissioner
Legal and Compliance
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR97-2519

Dear Ms. Keller:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 109427.

The Texas Department of Insurance (the "department") received a request for complaints filed against PCA Health Plans of Texas from January 1, 1997 to the date of the request. You assert that information responsive to the request is excepted from disclosure pursuant to section 552.103(a) of the Government Code.¹ You submitted to this office for review representative samples of responsive information.²

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the

¹You initially asserted that sections 552.101, 552.103 and 552.305 of the Open Records Act were applicable. You have narrowed your argument against disclosure and now assert that only 552.103(a) of the Government Code is applicable.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). Here, we do not address any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You have submitted to this office information showing that the department reasonably anticipates litigation. Based upon the information provided and our review of the documents, we agree that the responsive documents are excepted from disclosure under section 552.103(a).

Thus, you may withhold the information at issue. We note, however, that once information has been obtained by all parties to the litigation, no section 552.103(a) interest generally exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). The department may withhold the records at issue that the opposing party to the anticipated litigation has not seen or had access to. The applicability of section 552.103(a) also ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 109427

Enclosures: Submitted documents

cc: Ezra LaVern Jordan
6320 Cypress Lane
Katy, Texas 77493
(w/o enclosures)